

Queer Theory and Animal Law

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Abstract: Traditional animal law focuses on animals that display humanist traits of value such as autonomy and self-awareness. Therefore, animals worthy of legal recognition under the gaze of traditional animal law must escape their own animality in order to qualify for the law’s protection. In other words, for a whale, dolphin, ape, or elephant (the usual priorities of traditional animal law) to live, the animal within them must die.

Queer theory, in particular the concept of ‘utopia’ offered by Jose Esteban Muñoz, ‘Wildness’ by Jack Halberstam, and Michel Foucault’s invention of the ‘homosexual,’ suggests a different way to perceive the animal law field, disengaged from the logic and demands of humanism.

Acknowledging the faults of traditional animal law while recognizing the captivity of the term ‘animal’ in an animal/human binary, the application of queer theory concerning animal begets the ‘not-animal,’ a negation of identity that resists ideological capture. The brief examination of the relationship between animality and sexuality that follows aims to illuminate the circular logic of traditional animal law and justify a new terminology and theorization of the many beings who share this planet.

Keywords: Animal; Not-Animal; Queer Theory; Utopia; Sexuality; Animal/Human Binary.

1. The Animal

Lawyers, by nature of the trade, are agents of the almighty and all-enforcing spectral ‘state’ in that the lawyering profession necessarily acquiesces, if not to *a* law, then certainly to *the* law and the subsequent legal processes presided over by legislative and administrative bodies. And it is *the* law that conjures a world segregated by those who hold rights and those who do not.

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‘To imagine a language is to imagine a form of life’ says the philosopher Ludwig Wittgenstein.¹ Much has been written on the relationship between animals and the law, either approvingly or negatively, but regardless of attached affect, the fact remains that animal law exists because of the law’s failure to recognize non-human species as complete legal subjects. Certainly, within American jurisprudence, non-human animals are not considered to be right holders and instead mere property.² Hence, the purpose of (American) animal law is to obtain some degree of animal protection, equality, or rights through and under the law, the very same law that has confined the non-human to objecthood and serves as an obstacle to animal law’s current ambitions. Therefore, a question looms: does the ardent belief in the rule of law harm the creatures that animal law seeks to protect?

The strain of animal law central to this interrogation—traditional animal law—derives from the humanist ideal of liberal legalism described by law scholar Maneesha Deckha as ‘a human who is self-sufficient, independent, and fully rational and who needs no positive assistance from the state to get on in life.’³ Under this legal framework, the failure of the law is only the limitation of the humanist ideal to only humans.⁴ For a real-world example, The Nonhuman Rights Project restricts its focus to great apes, cetaceans, and elephants as these species satisfy the organization’s criteria for deciding which non-humans to represent: (recognized) autonomy and self-awareness.⁵ Consequentially, animal law or rights becomes an oxymoron: an application of a concept given to an ontology dependent on its absence. In this attempt to find the human within the animal, Derrida’s encapsulation of the animal as ‘all the living things that man does not recognize as his fellows, his neighbors, or brothers’⁶ resonates, as do the sentiments found in dictionaries. Merriam Webster describes the animal

¹ Quoted in Jacques Derrida, *The Animal That Therefore I Am* (David Willis tr, Fordham University Press 2008) 34 (as cited in Cary Wolfe, ‘What Was “The Animal”? Ontology And Its Discontents’ 1 *The Philosopher* 5)

² Gary Francione, *Animals, Property, and the Law* (Temple University Press 1995) 26

³ Maneesha Deckha, *Animals as Legal Beings*, (University of Toronto Press 2021) 12

⁴ *ibid*

⁵ ‘Do You Only Care About Those Animals?’ (*The Nonhuman Rights Project*)

<<https://www.nonhumanrights.org/about-us/>> accessed 23 October 2025

⁶ Quoted in Jacques Derrida, *The Animal That Therefore I Am* (David Willis tr, Fordham University Press 2008) 34 (as cited in Cary Wolfe, ‘What Was “The Animal”? Ontology And Its Discontents’ 1 *The Philosopher* 5)

as 'one of the lower animals as distinguished from human beings.'⁷ In searching for the markers of autonomy and self-awareness—an animal's humanity—the animal, in order to be deemed worthy of life, must escape their own animality.

2. The Not-Animal

To break free from captivity of humanist ideals, I propose an animality unknown to law, neither human nor animal, but instead a 'not-animal,' a negation representative of the utopic trope of the good place/not place, theorized by queer scholar Jose Esteban Muñoz in his seminal book *Cruising Utopia* as an ideality that exists only in the future, felt as 'the warm illumination of a horizon imbued with potentiality,'⁸ not to be confused with political universalism that yearns for an existence under the law and made manifest by rights.⁹ Therefore, if the flaw of traditional animal law is a stabilized humanist center, then the value of queer theory in animal law is its 'disappearing and reappearing act.'¹⁰ Queerness then is a state of motion, constantly oscillating between disappearance and emergence and always out of reach.

But what can be the purpose and function of something unobtainable in the law? The conceptualization of the not-animal is not the advocacy for a new legal category, but rather the recognition of biopolitics at play located inside the animal of animal law. The not-animal then is the route of alterity that breaks the rigid categorizations of identity, subsequently queering the human, the animal, and the law. To find this route, I briefly examine histories of species collapse instigated by sex and sexuality and extend Michel Foucault's famous assertion that the 19th century sodomite

⁷ 'Animal, N. Sense 2.a' (*Merriam-Webster Dictionary*) <<https://www.merriam-webster.com/dictionary/animal>> accessed 16 September 2025

⁸ José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York University Press 2009) 1

⁹ Michael Warner, 'Introduction' in Michael Warner (ed), *Fear of a Queer Planet: Queer Politics and Social Theory* (University of Minnesota Press 1993) vii

¹⁰ Leo Bersani, *Homos* (Harvard University Press 1996) 33

became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology...The sodomite had been a temporary aberration; *the homosexual was now a species*.¹¹

For Foucault, the invention of the homosexual was an exertion of power as the pathologized homosexual, as opposed to the temporal sodomite, could be punished before an actual expression of sex and therefore the homosexual becomes defined by something more than *just* sex. I argue that this removal of sexuality runs parallel to a simultaneous removal of, and emergence from, animality, perhaps evident in what I perceive to be the historical evolution of sodomy or buggery, once referring to same-sex *and* inter-species sex not as the human *abusing* the animal but rather implying the sodomite also *as* the animal.¹² Therefore, the desexualized and universal homo(not)sexual warned of by Warner and Edelman can be read as the abandonment of animality in exchange for humanity. The not-animal, conversely, is the once again blend of human-animal relations meant to trouble certain understandings of animal law.

The human-animal relationship is undoubtedly sexual. A multitude of states accede the sexuality tacit in the relationship between human and animal, manifested in the exceptions to bestiality laws. For example, Washington rapidly altered its animal cruelty statute to include sexual conduct in the aftermath of the Mr. Hands zoophilia scandal—the videotaping of a man receiving anal intercourse from a horse and his subsequent death—because at the time of the affair, no Washington law forbade inter-species sexual intimacy.¹³ In 2006, the state legislature amended the statute to include such acts, but slyly allowed for an exception: ‘nothing in this section prohibits accepted animal husbandry practices.’¹⁴

In his book *Wild Things: Disorder of Desire*, Jack Halberstam reorients this relationship between sexuality, human, and animal, vividly re-depicting the gear worn in falconry as the

¹¹ Michel Foucault, *The History of Sexuality: An Introduction* (Knopf Doubleday Publishing Group 2012) 43

¹² ‘Buggery, N., Sense 2’ (*Oxford English Dictionary*, 2025) <<https://doi.org/10.1093/OED/1067638408>>

¹³ Jack Halberstam, *Wild Things: The Disorder of Desire* (Duke University Press 2020) 122

¹⁴ Revised Code of Washington § 16.52.205 Animal cruelty in the first degree <<https://app.leg.wa.gov/RCW/default.aspx?cite=16.52.205>> accessed 16 September 2025

costumes worn in fetishistic practices—leather hoods and gloves—in their attempt to outline an epistemology of the ferox, chronicling the relationship between certain queer men and falcons, arguing that the falcons are not merely outlets for closeted homosexuality but are the subject of envy by their human admirers because of the falcon's accessibility and proximity to wildness.¹⁵ For Halberstam, wildness is not one half of the tame/wild binary aesthetic promulgated by Victorian society and romanticism, but 'the entropic force of a chaos that constantly spins away from biopolitical attempts to manage life and bodies and desires.'¹⁶ Specifically, Halberstam uses the author T.H. White and his relationship with a falcon to concede

White may well have lacked a language for his desire, and indeed the relation to the hawk may indeed have afforded him an object for it, *but if his love could speak*, I am not sure that it would have spoken in the language of homosexuality.¹⁷

Such Bestial relations like White and his falcon represent the desegregation of the human/animal binary, causing a symbolic death of the figure of the human and denying what Lee Edleman calls reproductive futurism in his book *No Future: Queer Theory and the Death Drive*. To Edleman, reproductive futurism utilizes the symbol of the child 'to authenticate social order, which it then intends to transmit to the future in the form of its inner child.'¹⁸ Thus, queerness, conversely, spirals towards death. To join the social order, queers must then renounce their queerness, to renounce sex(uality), and conscript to a heteronormative order. 'Only by renouncing ourselves can queers escape the charge of embracing and promoting a "culture of death," earning the right to be viewed as "something far greater than what we do with our genitals."' ¹⁹ Of course, the concept of the death drive is associated with Sigmund Freud, who, in *Civilization and its Discontents* offers his own theory of humanity.

¹⁵ Halberstam (n 11) 77-111

¹⁶ *ibid* 7

¹⁷ *ibid* 95 (emphasis mine)

¹⁸ Lee Edelman, *No Future: Queer Theory and the Death Drive* (Duke University Press 2004) 3

¹⁹ *ibid* 47

The diminution of the olfactory stimuli seems itself to be a consequence of man's raising himself from the ground, of his assumption of an upright gait; this made his genitals which were previously concealed, visible and in need of protection and so provoked feelings of shame in him. The fateful process of civilization would thus have set in with man's adoption of an erect posture.²⁰

If Sigmund Freud believes the human to be that who stood up right, bestiality, which non-reproductively produces pleasure instead of capital—White and the falcon—makes the human crouch down once more, an evolutionary reversion.

3. Conclusion

The investigation central to this piece is only a very brief foray into a history of animality and queer theory as a critique of traditional animal law. The purpose of such an inquiry, and the deployment of the ephemeral not-animal, is to complicate the categorizations inherent in the terminology of animal law and to illuminate the operations of powers being exerted. Instead of looking toward the horizon, perhaps (traditional) animal law is trapped in a vicious cycle of its own making: the quest for the recognition of animal rights in a system built upon the exclusion of rights to animal others. The end-goal of liberty within animal law, therefore, should not be the emergence of the human in some animals, but rather the total symbolic extinction of *the* animal.

²⁰ Sigmund Freud, *Civilization and Its Discontents* (James Strachey tr, W. W. Norton & Company 1961) 46